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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/592,908	07/17/2008	Jason R. Sullivan	CRD5080USPCT	4781
27777	7590	12/02/2010		
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003				
EXAMINER				
EVERAGE, KEVIN D				
ART UNIT		PAPER NUMBER		
3734				
NOTIFICATION DATE		DELIVERY MODE		
12/02/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jnjustpatent@corus.jnj.com

lhowd@its.jnj.com

gsanche@its.jnj.com

# Office Action Summary

**Application No.**

10/592,908

**Applicant(s)**

SULLIVAN ET AL.

**Examiner**

KEVIN EVERAGE

**Art Unit**

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2 and 4-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI.08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Interval Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed November 18, 2010 is fully considered. Claims 3 and 8 are cancelled. Claims 1, 2 and 4-7 are currently pending and under consideration.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1, 2 and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bosma et al. (US 6,443,972) in view of Greenhalgh (US 6,364,895) and Weaver (US 2004/0186510 A1).**

Bosma et al. ("Bosma") discloses an implantable, retrievable filter comprising first and second ends (see Figure 8, unlabeled) which define a longitudinal axis, a plurality of struts (defining passages 25) extending between the first and second ends defining first and second filter sections (first and second sections surround center section, labeled by ref. 24) and a center section connecting the filter sections (24), wherein the medical filter is formed from a single unitary tubular metal element for at least one of permanent, temporary or retrievable implantation (see column 5, lines 42-65; see Figure 6 showing single unitary metal element 19). While Bosma fails to disclose the second

filter section defining a greater number of filter cells than the first section, Greenhalgh discloses a vascular filter which has a second filter section with a greater number of filter cells than a first section (see Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the higher- density filtering in the second section, as disclosed by Greenhalgh, in the device of Bosma in order to provide a greater filtering efficiency, allowing particles to flow into the filter through the first portion but retaining those particles in the denser second portion (see Abstract). Bosma also fails to disclose a hook structure for recapture positioned on at least one end, however Weaver discloses that the use of a hook structure (26) for retrieval of an embolic filter is known in the art (see Paragraph 18). It would have been obvious to someone of ordinary skill in the art at the time of the invention to equip the filtering apparatus disclosed by Bosma with a hook structure at one end for quick and easy retrieval in light of Weaver's disclosure.

**Regarding claim 2**, the arrow in Figure 1 of Greenhalgh indicating the direction of blood flow shows that the first section is upstream of the second.

**Regarding claim 4**, the filter is usable in the vena cava.

**Regarding claim 5**, Figure 8 discloses anchors formed on at least one surface of the filter, and figures 9A-9C show a closer view of various embodiments of such anchors.

**Regarding claim 6**, the central portions of the struts extend parallel to the longitudinal axis (see Figure 8).

**Regarding claim 7**, Bosma discloses the filter being made of nitinol (see column 4, lines 11-14).

#### ***Response to Arguments***

4. Applicant's arguments filed November 18, 2010 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

#### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN EVERAGE whose telephone number is (571)270-7485. The examiner can normally be reached on 9-5, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571)272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KEVIN EVERAGE  
Examiner  
Art Unit 3734

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/K.E./

/EDUARDO C. ROBERT/

Supervisory Patent Examiner, Art Unit 3733